

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4824 of 1993

To

SPECIAL CIVIL APPLICATION No 4838 OF 1993.

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHRI D.J.JOSHI

Versus

PRINCIPAL CHIEF CONSERVATOR OF FORESTS

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Appearance:

MR GI DESAI for Petitioners

MR DA BAMBHANIA, AGP for Respondent No.1, 2.

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 18-20/04/98

COMMON ORAL JUDGEMENT

The petitioners are Range Forest Officers (Survey). The question is whether R.F.O.(Survey) are equal to R.F.O. They pray that right from creation of

Gujarat State in 1960 till 1988 all these offic.

been treated as equal to Range Forest Officer and paid the same pay-scale.

2. The RFO(Survey) was previously designated as Range Surveyor. The Gujarat Civil Service (Revision of Pay) Rules 1963, had entry No.153 as follows:-

153. Range Forest Officer		Existing		Revised
Instructor		Pay		Pay
Technical Asst.		Scale		Scale
Guest House Manager				
Range Surveyor		140-10-200-EB-		180-10-240-
Sanitary Inspector		10-230-15-275		EB-15-285-
		20-345		

By a Government order in the name of the Governor, dtd.16.7.1963, the government directed as follows in para 2 & 3.

2. Government is pleased to direct that the revised pay-scale of Range Forest Officers, sanctioned in Government Resolution, Agriculture & Revenue Department No.FST-1859/70888-A, dated the 7th August, 1961, should be deemed to apply to the posts of Ranger Surveyors with retrospective effect from 1st October, 1961.

3. Government is further pleased to direct that the post of Ranger Surveyor should be redesignated as Range Forest Officer, (Survey) with effect from 1-10-1961.

It is thus absolutely clear that this equality of RFO & RFO(Survey) is specifically and expressly accepted.

The Gujarat Civil Service Pay Rules, 1969 and ROP Rules, 1975 also gave the same revised pay scales to both RFO and RFO(Survey). Entry 23 of the Forest Department read as follows:-

23. Technical Assistant/		Existing		Revised
Range Forest Officer,		pay		pay
Superintendent,Saw Mill,		scale		scale
Range Forest Officer				
(Survey).		250-480		475-750

The ROP Rules, 1987 had the similar entry as

above (number as Entry 24) as follows:

24. Range Forest Officer/		Existing		Revised
Technical Assistant/		pay		pay
Superintendent Saw Mill/		scale		scale
Range Forest Officer				
(Survey)/		475-750		1400-2600
Instructor/				
Research Officer				

All these ROP Rules are on the recommendations of the successive Pay Commissions.

3. By the executive (non statutory) Government Resolution dated 19th April, 1988 (Annexure `B'), the Government decided to modify Entry No.24 and revise the pay-scale from 1400-2600 to 1640-2900 against the Entry No.24, "relating to Range Forest Officer". In Para.3, it is mentioned that the necessary amendment in the statutory Revision of Pay rules shall be made.

4. By the Notification dated 20th April, 1991, the statutory ROP rules have been amended and Entry No.24 is substituted as follows:

24(a). Technical Assistant/		Existing		Revised
Superintendent Saw Mill/		pay		pay
Instructor/		scale		scale
Research Officer				
		475-750		1640-2900

There is no entry of RFO or RFO(Survey) at all. The contention of the Government is that this substituted entry revises the pay of RFO, and not of RFO(Survey).

5. The contentions of the petitioners are that under the original Entry No.24 admittedly Range Forest Officer and Range Forest Officer (Survey) were both expressly covered and both were given the same pay-scale of 1400-2600. This equivalence and equality of both the cadres has been recognised by the Government and by all Pay Commissions all along.

6. Thereafter, at any point of time, there has been no reconsideration of this accepted equivalence and equality by any authority or experts committee and no conclusion that the Cadre of Range Forest Officer (Survey) is in any way inferior or unequal to the cadre of Range Forest Officer and, that therefore, it is required to be treated separately. It is, therefore, submitted that Range Forest Officer and Range Forest Officer (Survey) both are entitled to the same pay-scale

under the same Entry 24 under the statutory rules; and there is no entry whatsoever that Range Forest Officer (Survey) shall have the lower revised pay-scale of 1400-2600. In fact after the substitution of the original Entry 24 by new Entry 24(a), there is no entry whatsoever for RFO & RFO(Survey).

7. On behalf of the respondents, it is submitted that the question raised in these petitions are covered by the judgment of Mr. Justice S.D. Shah in the case of R.H. Bhatt V. Principal Chief Conservator of Forests and another - 1995(1) G.L.R. 327. In paragraph 2(ii) of the judgment it has been contended that when the Government passed the Government Resolution of dated 19th April, 1988, and amended the revised pay-scale against Entry No.24, Range Forest Officers (Survey) are entitled to the said higher revised pay-scale. It is not in dispute that such higher revised pay-scale was given but subsequently withdrawn.

8. The learned Single Judge has considered this aspect in paragraphs 11 to 16 of the judgment and he came to the conclusion that "for strong and convincing reasons the authority revising the pay-scale has found it fit to revise the pay-scale of Range Forest Officer and not to revise the pay-scale of Range Forest Officer (Survey)".

9. I have with the assistance of Mr. D.A. Bambhania, the learned Assistant Government Pleader gone through the files of the Government. I have not been shown any decision to show that any authority has found it fit not to revise the pay-scale of Range Forest Officers (Survey) while revising the pay scale of RFO. In fact, there is no such exercise or decision whatsoever, much less a conscious decision after application of mind and consideration all aspects that Range Forest Officer (Survey) is in any manner unequal and not entitled the same revision.

10. In paragraph 14, the learned Single Judge has observed that the pay-scale of Range Forest Officer only is revised against Entry No.24. In Column No.4 of the regarding the revised pay-scale against Entry No.24 in place of 1400-2600, 1640-2900 was to be substituted. This was an executive order which did not amend the rules and the rules were to be amended. Even if it is assumed that, it is applicable to Range Forest Officer, it does not in any manner indicate that the Range Forest Officer (Survey) was to be excluded or that there was any conscious decision to that effect. Not only that, there is no exclusion of Range Forest Officer (Survey) from

this further revision. There is no consideration whatsoever and no application of mind with that aspect when all Pay Commissions have considered both this cadres as equal. Their opinions is entitled to great weight in respect of such equivalence. It can be reconsidered and revalued by the government or other expert committee. But then that has to be a conscious decision, after all relevant aspects are considered, if any decision was to be taken that Range Forest Officer (Survey) is not to be granted further revision and to be granted only to Range Forest Officer.

11. In the present case, it seems that nowhere this aspect is present in the Government consideration and files. Therefore, the observations of the learned Single Judge in Para.15 that out of various posts included in Entry No.24 the Government has revised the pay scale of Range Forest Officer only and the Government has not revised the pay scale of other posts, is contrary to Government record.

12. The learned Single Judge has further observed in the same paragraph that by subsequent another Notification dated 20-3-1991, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, the Revision of Pay Rules were amended and Entry No.24 was substituted. (It is mentioned Entry No.24 and not as Entry No.24(a)). The learned Single Judge proceeds to observe in Para 16 of that judgment that the pay-scale of Technical Assistant, Superintendent Saw Mill, Instructor and Research Officer were revised to 1640-2900 by the revision in 1991. Thus, the learned Single Judge held that when the Government Resolution was passed on 19th April, 1988, the pay-scale of only Range Forest Officer out of Entry No.24 was revised and, the pay-scale of other Officers were not revised which came to be revised by the Notification in 1991. This is contrary to the government stand and the statutory rules. The Government Resolution of 1988 had not amended the statutory rules under Article 309 of the Constitution. It is case of the Government that R.F.O. necessarily means Technical Assistant, Superintendent Saw Mill, Instructors and it is their case that when the pay-scale of these post is revised, the pay-scale of R.F.O. revised. It is not their case that the scale of R.F.O. is revised in 1988 and the scale of other officers (Technical Assistant, Superintendent Saw Mill, Instructor and Research Officer) revised in 1991. According to the government, the scale is revised once by one statutory notification of 1991. Therefore the observation of the learned Single Judge that in the year 1988 as well as in

1991 the government had revised the pay-scales of different categories within the Entry No.24 is contrary to the facts on record. The observations that the government had not revised the pay-scale of R.F.O. (Survey) is only by involved implication, without there being any decision by deliberation.

13. The amended pay-scales were revised by Revision of Pay Rules in 1987. ...

Forest Officer and Range Forest Officer(Survey) referred the revised pay-scale of 1400-2600. The entry regarding Police Sub-Inspector in Home Department provided the pay-scale of 1640-2900 and, therefore, representation was made from the Forest Department that since 1960 all along the Range Forest Officer was placed above the cadre of P.S.I. and, therefore, the submission was made that the Range Forest Officer also should be placed in the pay-scale of 1640-2900. This representation were made for the entire category of the employees covered within this Entry No.24 The pay-scales of Range Forest Officer and P.S.I. from 1961 to 1987 are as follows:

	1961	Saela Pay Comm.	Desai Pay Comm.	Ahmedi Pay Comm.	Pay Comm	Present Pay Comm.
	1.	2.	3.	4.	5.	6.
Range Forest Officer	185-345	250-480	475-750	1145-1875	1400-2600	1400-2600
Police Sub-Inspector	160-260	425-600	1044-1620	1044-1620	1350-2200	1640-2900.

The aforesaid pay-scales of Range Forest Officer are for all the categories included in Entry No.24 and the question to be considered was whether all these persons included Entry No.24 in the revised pay-scale of 1400-2600, can be equated with P.S.I. for giving the pay-scale of 1640-2900. There was no differentiation within the Forest Department and within the categories of Entry 24. There was no such differentiation before any Pay Commission or authority at any time. Entry No.24, may be sake of convenience described as R.F.O.(Range Forest Officer). R.F.O.(Survey) has been never considered in any manner separately and independently and

consicously evaluated and found to be unequal to R.F.O. The stand of Forest Department has been consistent that for the purpose of pay-scale R.F.O.(Survey) is equivalent to R.F.O. When the Government Resolution of 1988 was passed by executive instruction, it was given effect in the case of R.F.O.(Survey) also. The remarks of the Forest Department are also to the effect that the pay-scale of R.F.O. being higher than that of P.S.I. For the first time the Pay Commission of 1987 gave the pay-scale to R.F.O. category which is below the pay-scale of P.S.I. and, therefore, atleast a pay-scale of P.S.I. 1640-2900 should be given to the R.F.O. and no distinction or differentiation was made between R.F.O. and R.F.O. Survey. It is clear from the note of the Forest Department as under:

"The Range Forest Officers are responsible for proper and timely execution of afforestation programmes, development works in forest area, forest protection, investigation of forest offences and so on. The position of forest personnel in the field becoming more and more precarious. Their duties and responsibilities are no less challenging as compared to Police Sub-Inspectors".

The R.F.O.(Survey) are the persons who are working in the field.

14. Even after the statutory amendment of 1991, the Forest Department has pointed out that the R.F.O.(Survey) seems to have been left out inadvertently, by the letter dated 1st September, 1992. The duties and responsibilities of the R.F.O.(Survey) as to how arduous and what circumstances they have to work in the forest are equivalent to the post of R.F.O. However, after this, it has not been pointed out that, at any time, any committee or Pay Commission or any authority has considered the equivalence or otherwise of the post of R.F.O. and R.F.O.(Survey). All along the consideration was between R.F.O. and P.S.I. and it was found that the demand made for equivalence with P.S.I. was fully justified because for all the years, by all the authorities R.F.O. including R.F.O.(Survey) was given higher pay-scale than P.S.I. It is, for the first time, by the Revision of Pay Rules of 1987 that R.F.O. and R.F.O.(Survey) pay-scale came to be brought down in comparison to that of P.S.I. This aspect has been considered by the Committee and the R.F.O. had been given the pay-scale of the P.S.I. 1640-2900. There is no discussion or any deliberation on the question that

R.F.O.(Survey) could not be given higher pay-scale and for what reason they had become unequal even though they had been equal for two decades and nobody had questioned that equivalence, much less considered.

15. The Forest Department which is in a better and intimate position to know its own cadres has also made a submission on 16-9-92 as follows:-

"1. RFO (Surveyor) cadre is filled up by promotion from Surveyors. There are no direct recruits and no promotion prospects for RFO Surveyors."

"2. In pre revised scale RFO, RFO(Surveyor), Research Officer, Supdt. Sawmill, Inspector & Technical Assistant were the cadres in the O/o PCCF drawing scale of Rs.475-750. Of these, the pay scale of all but RFO(Surveyor) have been revised to Rs.1640-2900 (after representation against proposed revision to Rs.1400-2600)."

"3. The educational qualification for Forest Surveyor, the feeder cadre for RFO (Survey) is Dip. in Civil Engr, or inter; whereas that for Forester in Matric and for RFO is proposed for B.Sc (first year pass)."

"Hence on the basis of revised pay scale of cadres which were on equal footing with RFO (Surveyor) in pre revised scale, and also in view of the educational qualification and technical nature of work of RFO Surveyor, it is submitted that RFO Surveyor cadre may also be granted revised pay scale of Rs.1640-2900."

This is weighty. However it is rejected on 29-9-92 on the ground that the High Level Anomaly Committee under the Chairmanship of the Finance Minister had considered the matter of revising the pay scale of Forest Officer (Surveyor) and the Committee had "carefully and in detail" examined and this Committee had not found any anomaly. Therefore this Committee had not recommended any revision for this cadre (RFO Survey).

This is wholly incorrect. Mr. Bhambhanian could not show any such consideration by the Committee. What that Committee had considered was RFO visa-a-vis PSI. There was no consideration of RFO visa-a-vis RFO Survey.

16. In view of the aforesaid discussions and in view



of my disagreement with the views expressed by Mr. Justice S.D.Shah, all these matters may be required to be referred to a Division Bench.

17. However, in any case, the State Government will have to apply mind on all the aspects and take an appropriate decision. Both sides agree that the Government may be directed to consider the question afresh. Mr. D.A. Bambhania, on instruction of the Officers of the Finance Department stated that the Government may be directed to reconsider. In view of this agreement and concession, these petitions are partly allowed.

18. Rule is made absolute by directing the State Government to consider afresh the question of the pay-scale of R.F.O. (Survey), after giving an opportunity to the petitioners. If the Government comes to the conclusion R.F.O.(Survey) have been equal to R.F.O., they shall be treated as equal and should be awarded in the same pay-scale of R.F.O. with effect from the said date and paid accordingly.

19. Until such decision is taken, no recovery shall be made from the petitioners. The State Government shall decide the matter within three months from the receipt of this judgment.

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